



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]

DECISION

BCS/145735

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 04, 2012, under Wis. Stat. § 49.45(5)(a), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on January 10, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals can direct that Petitioner's BadgerCare+ Core Plan eligibility be restored.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: No appearance

Sheboygan County Department of Human Services  
3620 Wilgus Ave  
Sheboygan, WI 53081

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sheboygan County.
2. Petitioner and his spouse were BadgerCare+ Core recipients when, in 2010, their granddaughter moved into their home. The granddaughter is under age 19.
3. As the caretaker relatives of the granddaughter the BadgerCare+ Core eligibility of Petitioner and his spouse was switched to the BadgerCare+ standard plan.
4. In late summer 2012, Petitioner's granddaughter moved back to the home of her parent(s).

5. With the granddaughter gone, the BadgerCare+ standard plan eligibility of Petitioner and his spouse was discontinued effective January 1, 2013.
6. No longer eligible for the BadgerCare+ standard plan as the caretaker relatives of the child under 19, Petitioner and his spouse sought reinstatement of their BadgerCare+ Core eligibility. This request was denied. Petitioner timely appealed.
7. Petitioner himself is a recipient of SSDI so does qualify for Medicaid if he meets a deductible of \$5893.98. His spouse, however, has no Medicaid coverage and has health problems, having had heart surgery in late 2012.

### DISCUSSION

Eligibility for the BadgerCare+ Core Plan is limited to individuals who do not have a dependent child under age 18 under their care:

In order to enroll in the Core Plan, an individual must meet all of the following criteria:

...

#### Dependents

- Does not have any children under age 19 under his/her care ( [2.2](#)).
- Is not pregnant. Exception: a Core Plan member who becomes pregnant remains enrolled in the Core Plan until she has provided pregnancy verification and becomes eligible for the BadgerCare Plus Standard or Benchmark Plan.

...

*BadgerCare+ Eligibility Handbook (BEH), §43.2.*

Caretaker relatives of child under age 19 are eligible for regular BadgerCare+ benefits. *See BEH, §2.1.* Conversely, if there is no child under age 19 in the home there is no regular BadgerCare+ eligibility.

Given this, it was appropriate for the agency to switch the BadgerCare+ eligibility of Petitioner and spouse to regular BC+ benefits from the Core Plan when they became the caretaker relatives of their granddaughter.

The question then becomes whether or not they can reenroll in the BC+ Core Plan. The question is also addressed by the *BEH*. Per the *BEH*:

...

If the disenrolled Core Plan member's eligibility for Medicaid or BadgerCare Plus (for families or pregnant women) ends within 12 months after the Core Plan certification period ended, s/he can reapply for the Core Plan and bypass the waitlist as long as all the steps (including payment of the \$60 fee) are completed and s/he continues to meet the non-financial requirements for the Core Plan.

...

*BEH, §43.11.1.*

Petitioner argues that it is not fair to not permit at least his spouse to regain Core Plan eligibility and seeks an order from the Division of Hearings and Appeals directing that that eligibility be restored. The Division of Hearings and Appeals that the Division does not, however, possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977).* The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Accordingly, the Division of Hearings and Appeals does not have authority under law ignore or change the rules described above thus the DHA does not have authority to order the relief sought by Petitioner.

Finally, as additional information for Petitioner's spouse I include the following.

A person can apply for elderly, blind or disabled Medicaid. See *Medicaid Eligibility Handbook*, § 4.1. Elderly is defined as one who is over age 65. *Id.*, §5.1. Disabled means that a person has been determined by the Disability Determination Bureau to have a disability or is receiving Social Security Supplemental Security Income (SSI) or Social Security Disability Income (SSDI). See *Medicaid Eligibility Handbook*, §5.2.

Further, in certain circumstances a local agency can approve disability based Medicaid for an individual before a SSA finding of disability:

When a has an urgent need for medical services attested to in writing by a medical professional, and is likely to be found disabled by DDB because of an apparent impairment, the member may be certified as presumptively disabled by the IM worker.

In determining that the applicant is presumptively disabled, the IM worker will need a “medical professional” to attest in writing that:

The individual’s circumstances constitutes an urgent need for medical services,

and

The individual has one of a certain set of impairments.  
*Medicaid Eligibility Handbook (MEH)*, §5.9.2.

Urgent need is defined as:

1. The applicant is a patient in a hospital or other medical institution; or
2. The applicant will be admitted to a hospital or other medical institution without immediate health care treatment; or
3. The applicant is in need of long-term care and the nursing home will not admit the applicant until Medicaid benefits are in effect; or
4. The applicant is unable to return home from a nursing home unless in-home service or equipment is available and this cannot be obtained without Medicaid benefits.

*MEH*, §5.9.2.1.

The list of impairments is found at §5.9.2.2 of the *MEH*:

1. Amputation of a leg at the hip.
2. Allegation of total deafness.
3. Allegation of total blindness.
4. Allegation of bed confinement or immobility without a wheelchair, walker, or crutches due to a condition that’s expected to last 12 months or longer.
5. Allegation of a stroke (cerebral vascular accident) more than three months in the past and continued marked difficulty in walking or using a hand or arm.
6. Allegation of cerebral palsy, muscular dystrophy or muscle atrophy and marked difficulty in walking (e.g., use of braces), speaking, or coordination of the hands or arms.
7. Allegation of Down’s syndrome.
8. Allegation of severe mental deficiency made by another individual filing on behalf of a claimant who is at least seven years of age.

9. A physician or knowledgeable hospice official (hospice coordinator, staff nurse, social worker or medical records custodian) confirms an individual is receiving hospice services because of a terminal condition, including but not limited to terminal cancer.
10. Allegation of spinal cord injury producing inability to ambulate without the use of a walker or bilateral hand-held devices for more than two weeks, with confirmation of such status from an appropriate medical professional.
11. End stage renal dialysis confirmed by a medical professional.
12. The applicant's attending physician states the applicant will be unable to work or return to normal functioning for at least 12 months or the condition will result in death within the next 12 months.
13. The member has a positive diagnosis of HIV with other serious health conditions and will be unable to work or return to normal functioning for at least 12 months or the condition will result in death within the next 12 months.

### **CONCLUSIONS OF LAW**

That only if a Core Plan member loses Core Plan eligibility to BadgerCare+ and then loses that BadgerCare+ eligibility within 12 months may Core Plan eligibility be restored.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

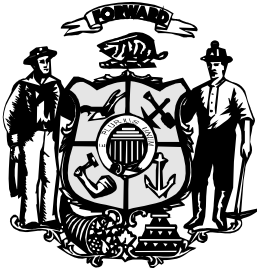
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of January, 2013

---

\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 24, 2013.

Sheboygan County Department of Human Services  
Division of Health Care Access and Accountability